

DD/A Registry
File 0 + M 5

DDA 77-5388

3 OCT 1977

MEMORANDUM FOR: General Counsel

ATTENTION :

FROM

: Michael J. Malanick
Acting Deputy Director for Administration

SUBJECT

: President's Reorganization Project Study of Legal
Representation Within the Executive Branch

REFERENCE

: Multiple addressee memorandum from George W.
Clarke dtd 23 September 1977, same subject
(OGC 77-6080)

1. I have reviewed the various papers forwarded by your memorandum of 23 September and have received inputs on this subject from the Assistant for Information and the Chief, Information and Privacy Staff. This memorandum should thus be considered a consolidated response from the three DDA addressees of referenced memorandum.

2. Realizing full well that the present system of utilizing components of the Department of Justice (DOJ) and the U.S. attorneys to represent CIA in matters of litigation is often frustrating and time consuming, we nonetheless feel strongly that this system should be continued in the future. The advantages of the present system outweighs its disadvantages for a variety of reasons. At present our in-house legal resources are stretched to an absolute maximum. Should, in the future, it be determined that CIA attorneys would represent the Agency in court, we would be compelled to significantly expand our legal staffs at the expense of other priority activities. Even if such an expansion were feasible, such a change would also draw increased attention to CIA's various court cases and would very probably result in even greater press coverage and publicity. We believe that publicity in this area is to be avoided to the extent possible.

3. We are aware that OGC attorneys are often frustrated by the fact that they are responsible for the very unglamorous and detailed labor involved in the preparation for litigation and then must sit back and watch a DOJ attorney reap the "glory" involved in the court proceedings. However, we believe this is the way it should be and the personal frustrations involved are an unfortunate by-product of the way the Agency must do business in this area.

4. As relates to the question of whether or not CIA should rely more or less on the DOJ for advice and guidance, it is our opinion that as long as the situation exists where the DOJ represents us in court, we must necessarily be responsive to that Department's advice and guidance. It is apparent that OGC has developed close working relationships with the Department and that these relationships are serving us satisfactorily at present. In this connection, you raise the question as to whether or not there should be details of attorneys between DOJ and the CIA. It would stand to reason that such detail assignments might foster even better and more productive relationships between the two organizations, and we believe that this would be a useful course to be explored in more detail.

5. The Agency's experience to date in litigation involving both matters of information and national security (such as Boyce and Lee) has been good. As laborious as the system is at times, we believe that the alternative course of more direct involvement of CIA in the court process would lead to both legal and security pitfalls that should be avoided.

/s/ Michael J. Malanick
Michael J. Malanick

STATINTL AI/DDA [REDACTED] ydc (30 September 1977)
Distribution:
Original - Addressee
1 - C/IPS
✓ 1 - DDA Subject w/ref
1 - DDA Chrono
1 - HGB Chrono

OGC 77-6080
23 September 1977

MEMORANDUM FOR: See Distribution

FROM :


Special Assistant to the General Counsel

SUBJECT : President's Reorganization Project Study of Legal
Representation Within the Executive Branch

1. The subject study was directed by the President on 25 August 1977. The President's memorandum of that date to the heads of executive departments and agencies outlines the purposes and objectives of the study (TAB A). Mr. F. T. Davis, Jr., Director, General Government Division, OMB, has written the Director and the General Counsel to inform them about the study (TAB B) and has requested the latter's assistance and participation.

2. Tony Lapham has asked me to take this on for him. I have already advised Mr. Davis that in some respects the problems to be studied, (see page 2, TAB A), do not involve the Director of Central Intelligence or CIA. On the other hand, I think we have a contribution to make in support of objective number 2 (page 2, TAB A) and therefore request that you advise me of the nature and frequency of contacts you and your components have with U.S. attorneys, components of the Department of Justice (DOJ) and the legal staffs of other departments and agencies. In addition, your thoughts, comments, or observations on how legal representation is or should be structured within the Executive Branch would be helpful. For example, should CIA (and other agencies) play a greater role in Freedom of Information Act and other litigation? In your opinion, should we rely more or less upon DOJ for advice and assistance? Should Agency attorneys be detailed to DOJ? Vice versa?

3. A response by 30 September would be appreciated.


STATINTL

Attachments

Distribution:

Acting DDCI
Acting D/DCI/IC
D/DCI/NI
DDI
DDO
DDS&T
Acting DDA
IG
Legislative Counsel
Comptroller
Executive Secretary
D/EEO

STATINTL

Mr. Lew Lapham
C/PCS/DDO
C/CAS/DDO

STATINTL

A/DDA/Information
C/IPS/DDA
OGC
OGC
OGC
OGC
Deputy General Counsel

Office of the White House Press Secretary

THE WHITE HOUSE

MEMORANDUM FOR THE HEADS OF

EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Examination of the Federal Government's Legal
Representation System

I have directed my Reorganization Project Staff at the Office of Management and Budget to review the Federal government's system for providing legal advice and representation to its departments, agencies, and regulatory commissions.

This study is designed to improve the way governmental units use the legal resources at their disposal, which include their own legal offices and the services of the Department of Justice, including United States Attorneys. Better use of these resources should help prevent unnecessary litigation and administrative delay by enabling the Federal government to do a better job of complying with its own rules and regulations.

A second objective will be to improve the way litigation is conducted in order to ensure better and more uniform application of the law.

This study will rely heavily on the advice and counsel of the Congress, Federal departments, agencies, and regulatory commissions, State and local officials, private organizations and the public.

I consider the effective use of legal resources to be a vital part of my Administration's effort to improve the performance of the Federal government; accordingly, I ask for your cooperation in providing staff assistance and other resources to assure the success of this review.

In order to inform all interested parties that this study is underway, I have directed that this memorandum be published in the Federal Register.

JIMMY CARTER

#

Problems

The Justice Department at one time carried on all litigation for the federal government. Increasingly in recent years departments and agencies have been given their own litigating capability. Today at least 21 separate units conduct some or all of their own litigation.

The growing friction between the Department of Justice and the other units of the federal government over litigation responsibilities is a symptom of several problems:

1. Lack of Coordination in Legal Action

This leads to the establishment of precedents at odds with government-wide policy positions and to nonuniform application of the law.

A recent Justice Department study reveals there is also inconsistent priorities for criminal prosecution among the Districts.

2. Misallocation of Resources

There are some 27 departments, agencies, and regulatory commissions which now employ about 10,000 attorneys in federal regional offices around the country. Their relationship to the 94 U.S. Attorney Offices has never been adequately studied to determine how improved coordination and cooperation can be achieved among these important offices.

3. Lack of Coordination in Policy-making

Poor coordination among agency policy-makers sometimes leads to unnecessary litigation.

Objectives

A Reorganization Project study group, drawn from concerned departments and agencies, will undertake the following actions:

1. Survey all federal units with litigation responsibility, examining the source and scope of their authority, their actual operations, and their interrelationships with other units.
2. Determine the current use of legal counseling services provided by the legal staffs of departments and agencies and by the Department of Justice, including its U.S. Attorneys.
3. Present the issues to representatives of the Attorney General, department and agency General Counsels, and the U.S. Attorneys. This group will help to develop and test new approaches to improved coordination and communication.

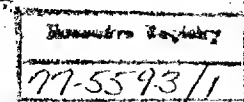


**PRESIDENT'S
REORGANIZATION
PROJECT**

Approved For Release 2002/01/08 : CIA-RDP80-00473A000400050004-3

WASHINGTON, D.C. 20503

September 8, 1977



OGC 77-5767
9-12-77

Admiral Stansfield Turner, USN
Director of Central Intelligence
Washington, D.C. 20505

Dear Admiral Turner:

On August 25, President Carter authorized a study of the Federal government's system for providing legal advice and representation to its departments, agencies and regulatory commissions. This study will be conducted by the President's Reorganization Project within the Office of Management and Budget. The study staff will be composed primarily of detailees from agencies and departments.

While most of this study's working level contacts will be with representatives of agencies' legal staffs, I want to take this opportunity to seek your advice and cooperation directly. The project is anxious to have the thoughtful suggestions of both executives utilizing Federal legal representation and the lawyers providing the representation. Accordingly, I have enclosed copies of the President's memorandum concerning this study and my recent letter to your General Counsel or Solicitor. Should you have any comments and suggestions now or as the study proceeds, I would appreciate hearing from you.

With the assistance of a representative of your legal staff, we will keep you informed about the study's progress and its deliberations. In this way, I anticipate all parties can best be informed about this reorganization initiative.

If you have any questions or if I can be of any assistance, please do not hesitate to call me at 395-4962. If I am unavailable, please ask for Judith Areen, the Project Director, or Christopher Davis, the Project Staff Director.

I look forward to your comments and working with you and your staff.

Sincerely,

F. T. Davis, Jr.
Director
General Government Division

Enclosure

23 7 150 24, 11



**PRESIDENT'S
REORGANIZATION
PROJECT**

Approved For Release 2002/01/08 : CIA-RDP80-00473A000400050004-3

WASHINGTON, D.C. 20503

11-3 176
9-12-77

Mr. Anthony A. Lapham
Office of the General Counsel
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Lapham:

On August 15, 1977, President Carter directed the Reorganization Project in OMB to study the Federal Government's system for providing legal counseling and representation to its department, agencies, and regulatory commissions. The review will focus on the Department of Justice (including the U.S. Attorneys), the various offices of General Counsel, and legal field staffs.

I would like to take this opportunity to seek your advice and counsel not only as we start this important project, but at any stage along the way. If at any time you think we are missing critical points or information important to our deliberations, I would appreciate your letting me know.

In particular, I am requesting your suggestions on how the government's legal system could be more effectively structured. There are certain areas of interest which have already been identified:

- (1) Procedures to permit more effective use of the legal counseling services of department and agency legal staffs and of the Justice Department to speed compliance with new regulations and court decisions and to avoid unnecessary litigation;
- (2) Distribution of litigation responsibility between the Department of Justice and other departments, agencies, and regulatory commissions;
- (3) Procedures for developing and administering civil and criminal litigation priorities;

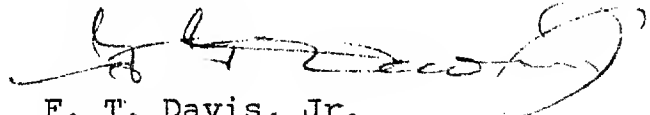
- (4) Mechanisms for resolving disputes among departments and units that otherwise may result in unnecessary litigation.

We would like to have your comments on these areas as well as other areas which should be examined in the study.

We are forming a task force to be composed of representative General Counsels and Departmental Solicitors, representatives of the Department of Justice and Policy officials. I would appreciate your designating someone within your office to serve as your liaison with our study effort. Your response by September 15, 1977, will permit me to have the benefit of your thoughts during development of the project work plan.

If you have any questions or if I can be of any assistance, please do not hesitate to call me at (202) 395-4962 (IDS 103). If I am unavailable, please ask for Judy Areen, the Project Director, or Christopher Davis, the Project Staff Director.

Sincerely, .



F. T. Davis, Jr.
Director
General Government Division

STATINTL

Approved For Release 2002/01/08 : CIA-RDP80-00473A000400050004-3

Approved For Release 2002/01/08 : CIA-RDP80-00473A000400050004-3